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I. JURISDICTION/VENUE

- 1.1 This Court has jurisdiction in this matter and venue is properly situated in Spokane County, Washington, under RCW 4.12.025. Defendants have offices or transact business in Spokane County, Washington and Plaintiff's cause of action arose out of Defendants' failure to repay debt pursuant to a commercial agreement between the parties for Defendants' business transactions.
- 1.2 Based on information and belief, Defendants have transacted business in Spokane County, Washington by supplying parts and accessories purchased with financing provided by Plaintiff.
- 1.3 At all times material hereto, Defendants were doing business in the state of Washington as motorcycle retail locations.

II. PARTIES

- 2.1 Plaintiff HDCC is a Nevada corporation.
- 2.2 Defendants are husband and wife, residing in Kennewick, Washington.

III. INDEBTEDNESS TO PLAINTIFF

3.1 On or about July 13, 1999, Shumate Harley-Davidson, LLC, now known as Shumate Tri-City, LLC, entered into a Harley-Davidson Credit Corp. Customer Financing Agreement, wherein HDCC agreed to finance the purchase of goods and/or services from Harley-Davidson Motor Company and Buell Distribution Corp.

COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT: 2

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- 3.2 On or about February 1, 2004, Shumate Spokane, LLC entered into a Harley-Davidson Credit Corp. Customer Financing Agreement wherein HDCC agreed to finance the purchase of goods and/or services from Harley-Davidson Motor Company and Buell Distribution Corp.
- 3.3 John Michial Shumate and Jennifer D. Shumate entered into continuing Guaranty Agreements guaranteeing the obligations of Shumate Spokane, LLC and Shumate Tri-City, LLC to HDCC.
- 3.4 The Shumates are, directly or indirectly, majority owners and the operators of the Debtors' Harley-Davidson dealerships.
- 3.5 The Customer Financing Agreements with Shumate Spokane, LLC and Shumate Tri-City, LLC granted HDCC a purchase money security interest in all inventory, equipment and other goods purchased by the debtors and financed by HDCC, as well as a non-purchase money security interest in equipment, fixtures, inventory, documents relating to inventory, software, general intangibles, accounts, contract rights, chattel paper and instruments, and all spare and repair parts, special tools, equipment and replacements for, and all returned repossessed goods, the sale of which gave rise to the, foregoing.
- 3.6 HDCC properly perfected its security interest in the collateral through filings with the Washington Department of Licensing.
- 3.7 The Customer Finance Agreements provide that the Debtors will pay HDCC the floored amount upon sale of the collateral.

COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT: 3

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COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT: 4

3.8 The Customer Finance Agreements further provide that upon an event of default, the Debtors will segregate and keep the collateral in trust for HDCC.

IV. **DEFAULT**

- In December 2008, the Debtor dealerships fell into default for failing 4.1 to account to HDCC for the proceeds of sales of HDCC's collateral.
- 4.2 The Debtors and Defendants entered into several agreements with HDCC wherein the Debtors and Defendants agreed to cure the defaults and discontinue sales out of trust.
- 4.3 The Debtor dealerships continued in default on and through September 9, 2009, when they filed for bankruptcy relief.
- 4.4 On January 16, 2009, July 2, 2009, July 22, 2009 and August 6, 2009, HDCC sent Notices of Default and Demand for Payment to the Debtor dealerships and the Defendants Shumate.
- 4.5 The Notices of Default advised the Debtor dealerships and the Defendants of sales of collateral out of trust and their failure to cure the payment defaults arising from their sales out of trust.
- Despite these Notices, the Debtor dealerships and Defendants 4.6 Shumate failed to cure the defaults, continued to make sales out of trust and remained in default on and through the date they filed their respective bankruptcy proceedings.
- On August 11, 2009, HDCC filed an action in Spokane County 4.7 Superior Court against the Debtor dealerships and the Guarantors.

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- 4.8 On August 11, 2009, the Spokane County Superior Court entered a Temporary Restraining Order enjoining the Debtor dealerships and Guarantors from moving, selling, or otherwise disposing of HDCC's collateral.
- 4.9 On August 12, 2009, Defendant John Michial Shumate was served with a copy of the Temporary Restraining Order.
- 4.10 Despite notice of the Temporary Restraining Order, the Debtor dealerships and Defendants Shumate continued to sell collateral out of trust.
- 4.11 As of October 23, 2009, the total for sales out of trust made by Shumate Tri-City, LLC, was \$192,735.50.
- 4.12 As of August 26, 2009, the total of sales out of trust made by Shumate Spokane, LLC, was \$937,170.69.

V. DISCHARGE

- 5.1 Despite knowledge of the requirement for payment of proceeds of sales of collateral to HDCC, numerous notices of their failure to comply with this requirement and knowledge that failure to comply with the requirement would result in harm to HDCC, Defendants failed to pay to HDCC the proceeds of the sale of HDCC's collateral.
- 5.2 The acts of Defendants in knowingly failing to pay proceeds from sale of HDCC's collateral constitute wrongful acts, done intentionally, which necessarily caused injury to HDCC without just cause or excuse.
- 5.3 The acts and conduct of Defendants constitute willful and malicious injury to HDCC under 11 U.S.C. § 523(a)(6).

COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT: 5

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- 5.4 As a consequence of Defendants' willful and malicious acts, HDCC has sustained damages in the amount of \$1,129,906.19, plus accrued interest, costs and fees.
- 5.5 HDCC is entitled to judgment against Defendants Shumate for the entire amount of the sales out of trust and a determination that the claim represented by the judgment is not dischargeable.

CLAIM FOR RELIEF

WHEREFORE, HDCC prays for relief as follows:

- 1. For an Order determining that the debt owed by Defendants to HDCC is not dischargeable pursuant to 11 U.S.C. § 523(a)(6);
- 2. For judgment in favor of HDCC against Defendants Shumate in the amount of \$1,129,906.19 plus interest at the contract rate;
 - 3. For HDCC's costs and attorneys' fees; and
 - 4. For such other and further relief as the Court may deem appropriate.

DATED this 28th day of December, 2009.

LUKINS & ANNIS, P.S.

Ву

JED W. MORRIS WSBA# 13832

Attorneys for Plaintiff

Harley-Davidson Credit Corp.

COMPLAINT TO DETERMINE DISCHARGABILITY OF DEBT: 6

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